



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0339

Introduced 2/15/2005, by Sen. Kirk W. Dillard - John J. Cullerton - Dan Cronin

SYNOPSIS AS INTRODUCED:

New Act

Creates the Limiting Strategic Litigation Against Public Participation Act. Provides that a party may bring a special motion to strike any claim that is based on an action involving public participation and petition. Provides that, if the moving party on a special motion to strike meets the prima facie requirements, the responding party must establish a probability of prevailing on the claim. Outlines the procedures for filing a special motion to strike. Provides that a moving party on a special motion to strike who prevails is entitled to costs of litigation, reasonable attorney's fees incurred in connection with the motion, and any additional relief, including sanctions upon the responding party and its attorneys or law firms, that the court determines necessary to deter reputation of the conduct and comparable conduct by others. Effective immediately.

LRB094 06346 LCB 36422 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Limiting Strategic Litigation Against Public Participation
6 Act.

7 Section 5. Findings; purposes.

8 (a) The General Assembly finds and declares that:

9 (1) There has been a disturbing increase in lawsuits
10 brought primarily to chill the valid exercise of the
11 constitutional rights of freedom of speech and petition for
12 the redress of grievances.

13 (2) Such lawsuits, called "Strategic Lawsuits Against
14 Public Participation" or "SLAPPs," are typically dismissed
15 as groundless or unconstitutional, but often not before the
16 defendants are put to great expense, harassment, and
17 interruption of their productive activities.

18 (3) The costs associated with defending such suits can
19 deter individuals and entities from fully exercising their
20 constitutional rights to petition the government and to
21 speak out on public issues.

22 (4) It is in the public interest for citizens to
23 participate in matters of public concern and provide
24 information to public entities and other citizens on public
25 issues that affect them without fear of reprisal through
26 abuse of the judicial process.

27 (5) An expedited judicial review would avoid the
28 potential for abuse in these cases.

29 (b) The purposes of this Act are:

30 (1) to strike a balance between the rights of persons
31 to file lawsuits and to trial by jury and the rights of
32 persons to participate in matters of public concern;

1 (2) to establish an efficient, uniform, and
2 comprehensive method for speedy adjudication of SLAPPs;
3 and

4 (3) to provide for attorney's fees, costs, and
5 additional relief where appropriate.

6 Section 10. Definitions. As used in this Act:

7 "Claim" means any lawsuit, cause of action, claim,
8 cross-claim, counterclaim, or other judicial pleading or
9 filing requesting relief.

10 "Government" means a branch, department, agency,
11 instrumentality, official, employee, agent, or other person
12 acting under color of law of the United States, a state, or
13 subdivision of a state or other public authority.

14 "Moving party" means a person on whose behalf the motion
15 described in Section 20 is filed seeking dismissal of a claim.

16 "Person" means an individual, corporation, business trust,
17 estate, trust, partnership, limited liability company,
18 association, joint venture, or any other legal or commercial
19 entity.

20 "Responding party" means a person against whom the motion
21 described in Section 20 is filed.

22 Section 15. Scope; exclusion.

23 (a) This Act applies to any claim, however characterized,
24 that is based on an action involving public participation and
25 petition. As used in this Act, an "action involving public
26 participation and petition" includes:

27 (1) any oral statement made, or written statement or
28 other document submitted, in a legislative, executive, or
29 judicial proceeding or other proceeding authorized by law;

30 (2) any oral statement made, or written statement or
31 other document submitted, in connection with an issue under
32 consideration or review by a legislative, executive, or
33 judicial proceeding or other proceeding authorized by law;

34 (3) any oral statement made, or written statement or

1 other document submitted, that is reasonably likely to
2 encourage, or to enlist public participation in an effort
3 to effect, consideration or review of an issue in a
4 legislative, executive, or judicial proceeding or other
5 proceeding authorized by law;

6 (4) any oral statement made, or written statement or
7 other document submitted, in a place open to the public or
8 a public forum in connection with an issue of public
9 concern; or

10 (5) any other conduct in furtherance of the exercise of
11 the constitutional right of free speech in connection with
12 an issue of public concern, or in furtherance of the
13 exercise of the constitutional right of petition.

14 (b) This Act shall not apply to any action brought by the
15 Attorney General or a State's Attorney or city attorney, acting
16 as a public prosecutor, to enforce laws aimed at public
17 protection.

18 Section 20. Special motion to strike; burden of proof.

19 (a) A party may bring a special motion to strike any claim
20 that is based on an action involving public participation and
21 petition, as described in Section 15.

22 (b) A party bringing a special motion to strike under this
23 Act has the initial burden of making a prima facie showing that
24 the claim against which the motion is brought is based on an
25 action involving public participation and petition. If the
26 moving party meets this burden, the burden shifts to the
27 responding party to establish a probability of prevailing on
28 the claim by presenting substantial evidence to support a prima
29 facie case. If the responding party meets this burden, the
30 court shall deny the motion.

31 (c) In making a determination under subsection (b) of this
32 Section, the court shall consider pleadings and supporting and
33 opposing affidavits stating the facts upon which the liability
34 or defense is based.

35 (d) If the court determines that the responding party has

1 established a probability of prevailing on the claim:

2 (1) the fact that the determination has been made and
3 the substance of the determination may not be admitted into
4 evidence at any later stage of the case; and

5 (2) the determination does not affect the burden of
6 proof or standard of proof that is applied in the
7 proceeding.

8 (e) The Attorney General's office or any government body to
9 which the moving party's acts were directed may intervene to
10 defend or otherwise support the moving party.

11 Section 25. Required procedures.

12 (a) The special motion to strike may be filed within 60
13 days after the service of the most recent complaint or, in the
14 court's discretion, at any later time upon terms it deems
15 proper. A hearing shall be held on the motion not more than 30
16 days after the service of the motion unless the docket
17 conditions of the court require a later hearing.

18 (b) All discovery and any pending hearings or motions in
19 the action shall be stayed upon the filing of a special motion
20 to strike under Section 20. The stay of discovery shall remain
21 in effect until the entry of the order ruling on the motion.
22 Notwithstanding the stay imposed by this subsection, the court,
23 on motion and for good cause shown, may order that specified
24 discovery or other hearings or motions be conducted.

25 (c) Any party shall have a right of expedited appeal from a
26 trial court order on the special motion or from a trial court's
27 failure to rule on the motion in a timely fashion.

28 Section 30. Attorney's fees, costs, and other relief.

29 (a) The court shall award a moving party who prevails on a
30 special motion to strike made under Section 20, without regard
31 to any limits under State law:

32 (1) costs of litigation and any reasonable attorney's
33 fees incurred in connection with the motion; and

34 (2) any additional relief, including sanctions upon

1 the responding party and its attorneys or law firms, as the
2 court determines shall be necessary to deter repetition of
3 the conduct and comparable conduct by others similarly
4 situated.

5 (b) If the court finds that the special motion to strike is
6 frivolous or is solely intended to cause unnecessary delay, the
7 court shall award reasonable attorney's fees and costs to the
8 responding party.

9 Section 35. Relationship to other laws. Nothing in this Act
10 shall limit or preclude any rights the moving party may have
11 under any other constitutional, statutory, case or common law,
12 or rule provisions.

13 Section 40. Severability of provisions. If any provision of
14 this Act or its application to any person or circumstance is
15 held invalid, the invalidity of that provision or application
16 does not affect other provisions or applications of this Act
17 that can be given effect without the invalid provision or
18 application.

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.